IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3853 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

(RANIP) VIKAS CO-OPERATIVE HOUSING SOCIETY LTD.

Versus

STATE OF GUJARAT

Appearance:

GIRISH PATEL ASSOC for Petitioner

MR. DAVE, AGP, for Respondent No. 1 & 2

MR JC VYAS for Respondent No. 3

MR IM PANDYA for Respondent No. 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/06/2000

ORAL JUDGEMENT

Rule was issued on 26.4.2000 and notice was issued regarding interim relief and the petition reached hearing today. With the consent of the learned counsel

for the parties, the petition is taken up for final hearing today and is being disposed of accordingly.

The petitioner-society was allotted a parcel of land admeasuring 800 sq. mtrs. in final plot No. 50 in village Ranip as mentioned in the order dated 29.10.1988 (as quoted in the order at Annexure-B) to the petition. The land was allotted subject to certain conditions, one of which was that the society shall have to commence construction on the land within six months. It appears that although on paper the petitioner society got possession of the land, they could not commence the construction, as according to the petitioner, respondent No. 4 had encroached upon substantial portion of the land. It appears that respondent No. 4 had filed Civil Suit No. 3618 of 1989 in the City Civil Court at Ahmedabad claiming declaration and injunction. The court is informed that the said suit came to be dismissed for non-prosecution as per the order dated 9.12.1993. The petitioner society, however, still did not get physical possession of the land in question and therefore has filed Regular Civil Suit No. 329 of 1999 in the court of Civil Judge (J.D.), Ahmedabad Rural at Mirzapur, Ahmedabad. That suit is still pending. In this petition, the petitioner society has prayed for the following reliefs:-

(B) directing the respondent No. 2 to provide the petitioner society with full and vacant possession of the land in question after following due process of law;

(C) directing the respondent No. 2 to grant time to the petitioner society to complete construction of houses over the land in question upto six months from the date on which the petitioner society gets full and vacant possession of the land in question in accordance with law;

(D) directing the District Court, Ahmedabad Rural to expedite the hearing of Civil Suit No. 329 of 1999 pending before the 5th Joint Civil Judge and JMFC (Rural), Mirzapur and to give judgement and order within a stipulated time.

As far as prayer (B) is concerned, the same is subject matter of the aforesaid Civil Suit. As far as prayer (D) is concerned, none of the parties have any objection to the prayer being granted. As far as prayer (C) is concerned, the learned counsel for the petitioner pressed for the same on the ground that on account of delay in litigation, the petitioner society is always under a threat that the allotment of land is being

cancelled on the ground of non-compliance with the conditions of commencing construction and completing the same.

Having heard learned counsel for the parties, it appears to the Court that in view of the fact that the petitioner society comprises of blind persons who have not been able to commence construction on the land in question for various reasons including the grounds mentioned hereinbefore, it would be just and proper to dispose of this petition in terms of the following directions:

(1) that the court of the learned Civil Judge (J.D.), Ahmedabad (Rural) at Mirzapur shall hear and decide Regular Civil Suit No. 329 of 1999 as expeditiously as possible and in any case on or before 31.8.2000.

(2) respondent No. 2 Collector, Ahmedabad, is directed to grant the petitioner society time to commence construction over the land in question and to complete the construction within a reasonable period which shall commence from the date on which the petitioner society gets vacant and peaceful possession of the entire land in question.

The petition is accordingly partly allowed. Rule is made absolute to the above extent with no order as to costs.

(M.S. SHAH, J)

(pkn)